

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. S-2476

PETITION OF SAFEWAY, INC.

OPINION OF THE BOARD

(Resolution Adopted November 12, 2003)
(Effective date of Opinion: February 10, 2004)

Case No. S-2476 is an application for a special exception to construct and operate an automobile filling station in conjunction with a Safeway grocery store.

The subject property is Parcel N5 on Tax Map JS 61, which is part of Parcel A, Block C, Cloverly, located in the southeast quadrant of the intersection of New Hampshire Avenue and Cloverly Street in Cloverly.

Pursuant to the authority in Section 59-A-4.125 of the Montgomery County Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County to conduct a public hearing and submit a report and recommendation. The Hearing Examiner convened a hearing on June 17, 19 and 27, 2003, closed the record in the case on July 7, 2003, and issued a report and recommendation, dated September 11, 2003, for denial of the special exception.

Decision of the Board: Special Exception **Denied**.

The Board of Appeals considered the Hearing Examiner's report and recommendation, together with a request for oral argument from C. Robert Dalrymple, Esquire and Anne C. Martin, Esquire, on behalf of Safeway, Inc., at its Worksession on November 12, 2003. The Board **adopts** the Report and Recommendation, and notes with particularity the Hearing Examiner's findings that:

- Based upon the preponderance of the evidence, the Applicant has not demonstrated that a need exists for the proposed gas station to serve the population in the general neighborhood. [Report and Recommendation, p. 34].
- The failure of the proposed use to comply with the fundamental vision, spirit and intent of the Master Plan would result in non-inherent adverse effects on the Cloverly Commercial Area, including the Cloverly Town Center, and on the surrounding neighborhoods. Accordingly, based upon the preponderance of the evidence, the Hearing Examiner concludes that the proposed Safeway gas station would have non inherent adverse effects that warrant denial of the petition” [Report and Recommendation, p. 79]
- Based upon the preponderance of the evidence ... the evidence is not sufficient to support a finding that lighting would not reflect or cause glare in any residential zone. [Report and Recommendation, p. 81]
- The proposed use would not be in harmony with the general character of the neighborhood established by the existing and proposed land uses, considering the intensity and character of activity and traffic that the use would generate. The noise fumes, lights, and traffic associated with the use would not be in harmony with the walkable, pedestrian-friendly, main-street shopping center that is under development on Cloverly Street. [Report and Recommendation, p. 83-84].
- Due to its inability to comply with the vision and spirit of the Master Plan, the proposed use would have an adverse effect on the planned development of the Cloverly Town Center and on any remaining development that could logically occur in the Cloverly commercial Area consistent with the Master Plan. [Report and Recommendation, p. 84].
- Due to its location at the entrance to the Cloverly Town Center area, the noise, fumes, illumination and glare associated with the proposed use would be objectionable at the subject site...characteristics of the use would have adverse effect on the walkable, pedestrian-friendly, mainstreet shopping center that is under development on Cloverly Street. [Report and Recommendation, p. 84].
- The evidence supports the conclusion that the proposed [use] would adversely affect the general welfare of residents, workers and visitors by having an adverse effect on the successful development of the Cloverly Town Center. [Report and Recommendation, p. 85].

Therefore, based upon the foregoing, on a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, Allison Ishihara Fultz

in agreement and Donald H. Spence, Jr., Chairman necessarily not participating:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request for oral argument on the Hearing Examiner's Report and Recommendation in Case No. S-2476, Petition of Safeway, Inc., is denied; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that Case No. S-2476, Petition of Safeway, Inc., is **denied**.

Donna L. Barron
Vice Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 10th day of February, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

